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 Loan Prairie, LLC d/b/a The Hub, SNG Tactical, LLC and Sprague's Sports, Inc.*

**IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA**

Estados Unidos Mexicanos,

Plaintiff,

vs.

Diamondback Shooting Sports, Inc., an
 Arizona corporation; SNG Tactical, LLC,
 an Arizona limited liability company;
 Loan Prairie, LLC D/B/A The Hub, an
 Arizona limited liability company; Ammo
 A-Z, LLC, an Arizona limited liability
 company; Sprague's Sports, Inc., an
 Arizona corporation,

Defendants.

Case No: 4:22-cv-00472-RM

**DEFENDANTS' JOINT RESPONSE TO
 PLAINTIFF'S NOTICE OF
 SUPPLEMENTAL AUTHORITY**

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On February 8, 2024, Mexico filed a Notice of Supplemental Authority based on a recent decision from the United States Court of Appeals for the First Circuit, *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, __ F.4th __, 2024 WL 227773 (1st Cir. Jan. 22, 2024). *See* ECF Doc. 44. The defendants respectfully submit this response.

At the outset, this decision is not binding on the Court. The Ninth Circuit’s decision in *Ileto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009) is binding, and, when in conflict with *Estados Unidos Mexicanos* as to the application of the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901-03 (“PLCAA” or the “Act”), must be followed.

Further, upon information and belief, the defendants in *Estados Unidos Mexicanos* have indicated a petition for a writ of certiorari to the United States Supreme Court will be filed, and it is anticipated a decision as to that petition will be released in approximately six (6) months. Thus, if this Court does find the First Circuit’s decision persuasive and intends to rely upon its holdings to deny defendants’ motion, defendants would respectfully request that this Court delay the issuance of an opinion on the present motion until after the Supreme Court decides whether to grant the petition.

The First Circuit in *Estados Unidos Mexicanos* was faced with some of the same legal issues presented to this Court. However, the allegations of fact in this Complaint are different, these defendants are in a different position than the manufacturer defendants in that case, and several of the claims and causes of action in this case are wholly different than the matter brought by Mexico in Massachusetts. However, a few of the holdings in *Estados Unidos Mexicanos* are directly on point in this matter, and as such, this Court should similarly reject Mexico’s contentions as to why the PLCAA does not apply to this lawsuit.

Extraterritoriality

In Mexico’s Notice of Supplemental Authority, it claims, “the Court of Appeals rejected the Government’s alternative basis of non-applicability of PLCAA, holding that it applies extraterritorially.” ECF Doc. 44, p. 6 of 8. Not quite. This was not an “alternative basis” asserted by Mexico. It was its primary argument, just as it is in this case. The First Circuit stated, “Mexico first contends that the PLCAA does not apply to lawsuits brought by

1 foreign governments for harm suffered outside the United States.” 2024 WL 227773 at *3.
2 Ultimately, the First Circuit found that applying the PLCAA to this lawsuit was not an
3 extraterritorial application; and finding that Mexico’s lawsuit was the type of case that was
4 the “focus” of the PLCAA, therefore, the location of the criminal acts, harm and plaintiff
5 were irrelevant to this analysis. *Id.*

6 The court determined that the focus of the PLCAA was regulating the types of lawsuits
7 and claims that can be brought against firearm industry defendants. *Estados Unidos*
8 *Mexicanos*, 2024 WL 227773 at *5-6. It rejected Mexico’s assertion that the focus of the
9 PLCAA was regulating third-party conduct with firearms and ammunition. It stated, “[w]hile
10 curtailing gun misuse is a laudable goal (and one that may be the focus of other statutes), it is
11 not the goal of the PLCAA.” *Id.* at *6. Thus, the court held that, “the presumption against
12 extraterritoriality does not bar application of the PLCAA to this case.” *Id.* With respect to this
13 issue, the First Circuit was right, and it is on all fours with the claims in this case. Mexico’s
14 lawsuit filed in this Court is subject to the PLCAA because Mexico brought this case in a
15 U.S. based court.

16 The First Circuit further rejected Mexico’s arguments that by its own terms the
17 PLCAA does not apply to this case. The court found that where the actual “criminal or
18 unlawful misuse” occurs is irrelevant and the location of harm non-dispositive. The court
19 held, “[t]he fact that a statute is focused on domestic concerns (here, lawsuits in the U.S.
20 courts) does not mean that every term in the statute need be read as somehow domestically
21 limited. And that is especially so where, as here, limiting the statute in this way would run
22 directly contrary to its stated purpose.” *Estados Unidos Mexicanos*, 2024 WL 227773 at *8
23 (internal citation omitted). Additionally, the First Circuit rejected Mexico’s argument that
24 foreign governments are not included within the ambit of plaintiffs prohibited from filing
25 such lawsuits. The court held, “the text, context, and purpose of the PLCAA all point toward
26 a conclusion that ‘[q]ualified civil liability action[s]’ include those filed in the United States’
27 federal and state courts by foreign governments for injury incurred abroad.” *Id.* at *9.

1 Finally, the First Circuit rejected Mexico’s last argument on the extraterritoriality
2 issue: “Its contention that our reading of the statute should give way to Mexico’s invocation
3 of international comity.” *Id.* The court held, “[t]he practical consequence of applying the
4 PLCAA to this case is not lost on us. It may be that Mexico, as it claims, would be unable to
5 pursue its lawsuit in the only forum that could provide effective injunctive relief. But that is a
6 necessary consequence of Congress’s decision to protect the U.S. firearm industry by
7 regulating the types of lawsuits that can be adjudicated in U.S. courts.” *Id.*

8 In summary, the First Circuit found that Mexico’s lawsuit was a qualified civil liability
9 action pursuant to the PLCAA, and unless Mexico articulated a plausible exception to the Act,
10 its case must be dismissed.

11 PLCAA Exceptions

12 Defendants respectfully disagree with the First Circuit’s ultimate conclusion that Mexico
13 had plausibly alleged violations of a predicate statute which proximately caused the complained
14 of harm sufficient to survive a motion to dismiss in its separate complaint against various
15 firearms manufacturers. However, within this portion of the decision, the First Circuit agreed
16 with several of the arguments made by defendants here, and as such, this lawsuit should be
17 dismissed, despite the First Circuit’s decision.

18 The First Circuit held that while the “predicate exception encompasses common law
19 claims in addition to statutory claims,” to do so, a plaintiff must adequately plead a “predicate
20 statutory violation that proximately causes the harm.” *Estados Unidos Mexicanos*, 2024 WL
21 227773 at *11. Said another way, a plaintiff may be able to proceed with a general negligence
22 claim in what should be a qualified civil liability action, but only if that plaintiff can first prove a
23 violation of a statute applicable to the sale or marketing of a qualified product that is a
24 proximate cause of the harm alleged. It is a two-step process, with the knowing violation of the
25 predicate statute being a proximate cause of the harm being a condition precedent to moving
26 forward with any common law claims. For example, take the situation where a firearm seller
27 fails to conduct a background check on a purchaser in violation of the Gun Control Act, which
28 would be a predicate statute; and then that firearm was somehow used illegally by the purchaser

1 to harm a plaintiff. However, if the purchaser was not prohibited from purchasing a firearm, and
 2 if he would have passed the background check had it been conducted, then this violation of a
 3 predicate statute could not be a proximate cause of the harm to the plaintiff because it would not
 4 have prevented the transfer of the firearm. The First Circuit held, “[t]he requisite proximate
 5 cause serves as a nexus between the predicate statutory violation and common law claims that
 6 otherwise might bear no relation to a seller’s transgression of firearm statutes.” *Id.* “This ensures
 7 that ... our reading of the predicate exception does not allow any claim at all to proceed merely
 8 because it is alleged in the same case as an unrelated statutory violation.” *Id.* In the example
 9 above, the PLCAA would still immunize that seller from a lawsuit with statutory and common
 10 law claims because the failure to conduct the background check could not be a proximate cause
 11 of the harm.

12 Mexico claimed in both cases that if it adequately alleged any violation of a predicate
 13 statute, then it has breached the PLCAA dam and all of its claims may flow through this gap.
 14 This is not a reasonable interpretation of the PLCAA, and the First Circuit clearly rejected this
 15 all or nothing argument.

16 In addition, while not directly stating as much, it is clear from the language of the
 17 decision that the First Circuit agrees with the defendants that the proximate cause test for the
 18 predicate exception must be evaluated pursuant to federal law, not Arizona or Mexican law. The
 19 First Circuit detailed the proximate cause test as, “[p]roximate cause demands some direct
 20 relation between the injury asserted and the injurious conduct alleged.” *Id.* at *16 (citing *United*
 21 *States v. Kilmartin*, 944 F.3d 315, 330 (1st Cir. 2019) (internal quotations omitted)). All of the
 22 cases cited by the First Circuit for this definition arose from federal statutes and common law. In
 23 fact, one of the case cited by the First Circuit, *Bank of Am. Corp. v. City of Miami, Fla.*, 581
 24 U.S. 189 (2017), in support of its conclusion that federal proximate cause analysis is required
 25 when assessing the predicate exception’s proximate cause requirement, was relied upon by the
 26 defendants in their reply brief (ECF Doc. 29, p. 13) in support of this argument. *See also City of*
 27 *Oakland v. Wells Fargo & Co.*, 14 F.4th 1030, 1035 (9th Cir. 2021) (“We begin where *Miami*
 28 began, with ‘[t]he general tendency ... not to go beyond the first step.’”). Thus, the proper test to

1 see if the alleged violations of a predicate statute proximately caused Mexico’s harm is “the
2 more stringent ‘direct relation’ standard, which requires ‘some direct relation between the injury
3 asserted and the injurious conduct alleged.’” *Id.* at 1035 (quoting *Bank of Am. Corp.*, 581 U.S. at
4 202-03).

5 Ultimately, the First Circuit’s decision to reverse the District Court came down to one
6 issue: the court found that Mexico had adequately alleged at the pleading stage that the
7 defendant manufacturers (and one distributor) “have been aiding and abetting the sale of
8 firearms by dealers in knowing violation of relevant state and federal laws.” *Estados Unidos*
9 *Mexicanos*, 2024 WL 227773 at *12. Thus, it was Mexico’s allegations as to the
10 manufacturers’ knowledge of commercial downstream misconduct and illegal sales, through
11 alleged U.S. Government notifications, as well as allegations that those defendants “make
12 deliberate design and distribution choices to facilitate the illegal trafficking of their guns to
13 Mexico,” that allowed the case to squeak by the motion to dismiss. *Id.* at *14-15. Here, in
14 contrast, Mexico fails to adequately allege that any of these particular federally licensed firearm
15 sellers knew that they were participating in illegal transactions. The predicate exception has a
16 “heighted mens rea requirement ... which applies only when the defendant ‘knowingly’ violates
17 a statute.” *Id.* at *12. From that perspective, and since the defendants in this case are retail
18 dealers involved in individual transactions, not nationwide distribution practices, the First
19 Circuit’s finding that their case was “remarkably analogous” to *Direct Sales Co. v. United*
20 *States*, 319 U.S. 703 (1943), is inapposite to the claims against these retail dealers.

21 CONCLUSION

22 While the First Circuit’s recent decision in *Estados Unidos Mexicanos* is instructive on
23 several issues, it is not dispositive on the claims before this Court. For the foregoing reasons,
24 all of Mexico’s claims should be dismissed with prejudice.

25 Dated: February 23, 2024
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CERTIFICATE OF SERVICE

I, Jeffrey Malsch, hereby certify that this document was filed with the Clerk of the Court via CM/ECF. Those attorneys who are registered with the Court's electronic filing system may access this filing through the Court's CM/ECF system, and notice of this filing will be sent to these parties by operation of the Court's electronic filings system.

Dated: February 23, 2024

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